***HON'BLE SRI JUSTICE BILAL NAZKI**

HON'BLE SRI JUSTICE P.S. NARAYANA

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+W.P.No.19764 of 1999

%29-06--2004

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Union of India and others

..... APPELLANTS

VERSUS

$ H.Siva Mohana Rao

and another

.....RESPONDENT

< GIST:

> HEAD NOTE:

! **Counsel for petitioner : Mr.R.S.Murthy**

^ **Counsel for Respondents:**

? Cases referred

NIL

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19764 of 1999

Between:

1 Union of India Rep by its General Manager
South Central Railway, Rail Nilayam, Secunderabad.
2 Chief Personnel Officer
South Central Railway, Rail Nilayam, Secunderabad.
3 Divisional Railway Manager
South Central Railway, Opposite Rail Nilayam, Secunderabad.

..... PETITIONERS

AND

1 H.siva Mohana Rao
O/o. Chief Permanent way Inspector South Central Railway
Kondaplli , A.P.
2 CENTRAL ADMINISTRATIVE TRIBUNAL
HAKA BHAVAN , HYDERABAD

(R2 is not necessary party to this Petition.)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to to issue a Writ of certiorari or any other appropriate writ, order or direction to set aside the order of Central Administrative Tribunal, Hyderabad Bench in O.A.No.850/98 Dt: 3-3-99.

Counsel for the Petitioners:MR.R.S.MURTHY

For the Respondent :

The Court Made the Following :

ORDER:- (*per* P.S.Narayana.,J)

Heard Sri R.S.Murthy, Counsel representing the writ petitioners. None present representing the respondent.

The Writ Petition is filed by the Union of India represented by General Manager, South Central Railway, Rail Nilayam, Secunderabad and others for issuance of a writ of certiorari or any other appropriate writ, order or direction to set aside the order of the Central Administrative Tribunal, Hyderabad Bench made in O.A.No.850/98 dated 3-3-1999 and pass such other suitable orders.

The 1st respondent in the Writ Petition H.Siva Mohan Rao is the applicant in O.A.No.850/98 aforesaid. The Central Administrative Tribunal was shown as

2nd respondent who had been referred to as unnecessary party. Hence the applicant in the O.A. is hereinafter referred to as respondent and the respondents in the O.A. are hereinafter referred to as petitioners for the purpose of convenience.

The respondent filed O.A.No.850/98 on the file of Central Administrative Tribunal, Hyderabad Bench praying for issuance of an order or direction to the petitioners in the Writ Petition declaring that the respondent/applicant is deemed to have been promoted to the post of Senior Clerk-Head Clerk in Civil Engineering Department of South Central Railway from the date when his junior in the category of Junior Clerk Smt.K.Sesheela was promoted to the said post and also grant the special pay of Rs.70/- in the post of Senior Clerk from the date when his junior Smt.K.Susheela was given the same with all attendant and consequential benefits including seniority and arrears of pay and pass such other suitable orders. The Central Administrative Tribunal, Hyderabad Bench, hereinafter in short referred to as "Tribunal" after appreciating the respective contentions of the parties came to the conclusion that the writ petitioners themselves have admitted that in the cadre of Junior Clerk, the respondent/applicant should be placed in between Smt.Pramila and Smt.Susheela and if so they do not see any reason for not promoting him as Senior Clerk when his senior and junior are promoted as Senior Clerks on the basis of seniority of interpolation in the cadre of Junior Clerk. It was also held that the writ petitioners appear to have disposed of the case by the impugned order dated 13-4-1998 without applying their mind and hence the same was set

aside and the respondent/applicant is entitled for promotion of Senior Clerk from the date when his immediate junior was promoted as Senior Clerk and on that basis the respondent/applicant is also entitled for further consequential promotions in accordance with law. It was further held that in the result the impugned order dated 13-4-1998 is set aside and the respondent/applicant should be in the seniority list as Senior Clerk on par with his immediate junior Smt.K.Susheela and consequential benefits arising on that basis on the placement of the respondent/applicant in the category of Senior Clerk should be given to him in accordance with law and accordingly the O.A. was disposed of. Aggrieved by the same, the Union of India and others/respondents in the O.A. had preferred the present Writ Petition.

Sri R.S.Murthy, the learned Counsel representing the writ petitioners had taken this Court through the contents of the counter affidavit filed in the O.A. by the writ petitioners and their specific stand taken in this regard. The learned Counsel also pointed out that the provision in the Railway Establishment Manual clearly states that medically decategorised employee should be allowed seniority in the grade of absorption and once the seniority is fixed in that grade subsequent promotions will be governed by the recruitment rules of the cadre. The Counsel also would maintain that Smt.Susheela was a Senior Clerk from 28-9-1986 whereas the respondent/applicant was a Jumbo Truck Operator and was invited to the sedentary post of Junior Clerk due to his medical decategorisation on 2-4-1993. The learned Counsel also would maintain that the Tribunal should have appreciated that giving any such seniority in a higher grade than the grade of absorption would amount to

absorption in the higher grade i.e., Rs.1200-2040 straight away and not in the grade of Rs.950-1500 i.e., the grade of absorption, which is offensive to the provisions contained in the Indian Railway Establishment Manual. The Counsel also would maintain that the respondent acquired right to the post of Junior Clerk only on 2-4-1993 and the seniority of Smt.Susheela has no relevance at all for the present purpose. The Counsel also would maintain that there is no grade of Rs.1200-1800 in the clerical grade and the respondent/applicant was invited into the clerical grade as Junior Clerk only on 2-4-1993 and hence his case cannot be compared with that of Smt.Susheela. The Counsel also would point out that the said Smt.Susheela was not even impleaded as a party. The learned Counsel also had explained in detail the stand taken by the writ petitioners/Railways in this regard.

Heard the Counsel and perused the material available on record.

The stand taken by the respondent is that he was initially appointed as Diesel Mechanic in the Railways on 4-9-1976 in the scale of Rs.196-232 (RSRP) and afterwards he was promoted as Truck Operator, Grade-I in scale of Rs.380-560 (RSRP) Rs.1320-2040 and on repatriation to his parent Department i.e., Mechanical Department, he was reverted to the scale of Rs.1200-1800 as Junior Truck Operator, Grade-II (Road Vehicle Division). It is also his case that while discharging his duties he was found medically decategorised in the medical examination held in the month of August 1992 as per the medical certificate No.R47, dated 27-8-1992 and he was provided the post of Junior Clerk in the scale of Rs.950-1500 as per proceedings dated 28-1-1993. But it is stated that though vacancies are available in Senior Clerk grade the Railways had given him only the Junior Clerk post which is lower in scale

of pay. It was further stated that the respondent/applicant was drawing a pay of Rs.1410/- in the scale of Rs.1200-2040. It was further stated that in view of the injustice done to him he made representation dated 8-4-1993 and 21-5-1993 requesting the concerned authorities to consider him to the post of Senior Clerk and inasmuch as no action was taken the respondent filed O.A.No.190/95 before the Tribunal and the Tribunal directed the Railways to dispose of the representation after giving personal hearing and consequent thereupon the Railways passed an erroneous order on 13-4-1998 and challenging the same the respondent filed O.A.No.850/98 on the file of the aforesaid Tribunal. It is also stated that as per I.R.E.M. Volume I, Rule 1313 it is obligatory on the part of the Railways to protect the pay of the employee previously drawn in the post held by him before decategorisation. However, even if there is no such post in which he was absorbed, he may be given the scale just below the pay previously drawn by him. It is also stated that when once the equivalent scale is available, it is mandatory on the part of the Railways to protect the pay by placing him in equivalent grade and by placing him in Junior Clerk grade he was deprived to draw the increments every year and was put to continuous monetary loss. It is also stated that the Railways had violated the Rules in placing him above Smt.K.Susheela by taking his length of service and even then not giving any consequential benefits such as promotion, special pay of Rs.70/- which were allowed to his juniors which is definitely discriminatory.

A counter affidavit was filed by Senior Divisional Personnel Officer in the O.A. denying all the allegations. It was stated that the respondent/applicant originally belonged to the Mechanical Department of Diesel Shed, Kazipet. It was also stated

that during the year 1980 the respondent/applicant was sent on deputation at his request to the construction organization to work under Divisional Engineer/Construction/CRS/Tirupathi by office order No.76/MC/Cadre/1980 dated 10-4-1980 and his lien was maintained in the Mechanical Department, Diesel Shed, Kazipet and he was liable to be repatriated from the construction organization to his parent cadre when his services are not required in the construction organization. The respondent/applicant was repatriated to his parent Department by letter dated 5-5-1987 of Chief Engineer (Construction). The respondent/applicant challenged the order of repatriation by filing O.A.No.953/87 and the same was dismissed by the Tribunal by Judgment dated 6-2-1990. Thereupon the respondent/applicant reported to duty at Diesel Shed, Kazipet on 9-7-1991 and he was posted as J.T.Operator Grade II in the scale of Rs.1200-1800 as per his lien and seniority maintained at Diesel Shed, Kazipet. It was further pleaded that the respondent/applicant was medically decategorised on 27-8-1992 while working as Road Vehicle Operator Grade II in the scale of Rs.1200-1800 in the Diesel Shed, Kazipet. Thereupon the respondent/applicant was absorbed as Junior Clerk in scale of Rs.950-1500 in the Engineering branch by the orders issued under Lr.No.CP/121/P.1/Admn/Clerks dated 2-4-1993 of Divisional Railway Manager (P), Secunderabad without loss of emoluments last drawn in his parent cadre in the scale of Rs.1200-1800 and on absorption the seniority of the respondent/applicant was fixed in the absorbed grade duly taking into account the total service rendered by him in the equivalent/higher grades in the parent cadre prior to medical decategorisation and the name of the respondent/applicant was interpolated in the then existing seniority list dated 5-4-

1990 by issuing Memorandum No.CP.121.P.10.Admn/Engg.Seniority dated 11-9-1993. The seniority of the respondent/applicant is interpolated as under :

S.No. Name(S/Sri) Date of entry into Gr.Rs.950-1500

1. S.Pramela 5-7-1978

2. H.Siva Mohana Rao 1-8-1978

3. Smt.K.Susheela 5-1-1979

It was further stated that the seniority list of Junior Clerks dated 5-4-1990 was depicting all the Engineering branch clerks based on their date of entry into the initial grade i.e., Rs.950-1500 though many of them were promoted to higher grades as Senior Clerks, Head Clerks, Office Superintendent Grade II etc. This practice was in vogue as an administrative convenience. However separate seniority lists for Junior Clerks, Head Clerks etc., based on their date of entry into the respective grades was also being maintained. In such grade wise seniority lists, the lower grade staff were not shown but all the staff promoted to higher grade were also shown. It was also further stated that owing to the above said practice the name of Smt.K.Susheela was being shown in the cadre of Junior Clerks also based on her date of initial entry though she was already promoted as Senior Clerk on 20-8-1986, much prior to the entry of the respondent/applicant in the cadre of Junior clerks. The name of Smt.Susheela was already shown at S.No.144 in the seniority list of Senior Clerks in Grade Rs.1200-2040 dated 5-4-1990. Thus it can be seen that

Smt.K.Susheela was no more in the cadre of Junior Clerks grade Rs.950-1500 on the date the respondent/applicant entered the category of Junior Clerks. But due to the practice of retaining all names in the basic grade of Junior Clerks, the respondent/applicant's name was placed above Smt.K.Susheela duly reckoning his date of entry into grade Rs.950-1500 in his parent cadre prior to medical decategorisation. However the fact remained that on the date of entry of the respondent/applicant into the category of Junior Clerks in Grade Rs.950-1500, Smt.K.Susheela was no longer in the said grade and her seniority was in the category of senior clerks in Grade Rs.1200-2040. In terms of Railway Board's letter dated 26-8-1964 the medically decategorised staff was entitled to reckon their seniority in the grade of absorption duly counting their service rendered in the equivalent and higher grades prior to medical decategorisation. It was also stated that the respondent/applicant has no right to reckon his service in a grade higher than the absorbed grade and hence he cannot compare himself with Smt.K.Susheela who was in the higher grade of Rs.1200-2040 as Senior Clerk on the date of absorption of the respondent/applicant as Junior Clerk in grade Rs.950-1500. It is submitted that the respondent/applicant on the date of his entry into the grade of Junior Clerks on 2-4-1993 was the senior most amongst all the existing Junior Clerks in grade Rs.950-1500 and he was adjudged suitable for being promoted as Senior Clerk on 23-4-1994. He was promoted as Senior Clerk on 25-4-1994. He was promoted as Senior Clerk on 15-5-1995 and his name is figuring at S.No.1 of the office order issued seniority wise. Hence it is very clear that no junior to the respondent/applicant in grade Rs.950-1500 was promoted as Senior Clerk ignoring the respondent/applicant. It was also further stated that the

respondent/applicant is not aware of the rule position for fixing his seniority and he is of the view that he has to be compared with Smt.K.Susheela because of the practice of continuing to show all the promoted staff in the basic grade. The respondent/applicant filed O.A.No.190/95 before the Tribunal seeking promotion on par with Smt.K.Susheela and the Tribunal disposed of the same by orders dated 20-1-1998 with a direction to give personal hearing to the respondent/applicant and to dispose of his representation by passing a speaking order. Accordingly the Divisional Railway Manager gave the applicant personal hearing and disposed of his representation by passing a speaking order which was communicated to the respondent/applicant by letter dated 13-4-1998. Not satisfied by the said order, the respondent/applicant filed the present O.A. taking irrelevant grounds. It was stated that the respondent/applicant was duly promoted fixing his seniority vis-à-vis all the Junior Clerks existing in the grade Rs.950-1500 on the date of absorption of the respondent/applicant as Junior clerk. The respondent/applicant cannot be considered for promotions in comparison with Smt.K.Susheela who was no longer in the grade of Rs.950-1500 on the date of the joining of the respondent/applicant as Junior Clerk. It is submitted that the communication dated 23-7-1994 quoted by the respondent/applicant was erroneously issued in so far as it held the respondent/applicant in comparison with Smt.K.Susheela who was in the higher grade of Rs.1200-2040 by the time the respondent/applicant was absorbed as Junior Clerk. The respondent/applicant can only be given seniority in his grade of absorption under the extant rules and he cannot be given any benefit contrary to the extant rules. The communication dated 23-7-1994 does not give the

respondent/applicant any vested right to claim any benefits beyond the scope of the rules. It was further stated that the contention of the respondent/applicant that he should have been directly absorbed as Senior Clerk in view of his working in grade Rs.1300-2040 is quite misleading. As already submitted, the respondent/applicant worked in grade Rs.1300-2040 only for some time on deputation on construction organization and this service did not give him any prescriptive right to that grade in his parent cadre. The fact remains that the respondent/applicant was repatriated by the construction organization by order dated 5-5-1987 and O.A.No.953/87 filed by the respondent/applicant challenging the repatriation was dismissed by the Tribunal on 6-2-1990. Thereupon the respondent/applicant joined in the year 1991 in the parent cadre Diesel Shed, Kazipet in grade Rs.1200-1800 and the respondent/applicant was medically decategorised on 27-8-1992 while he was working in grade Rs.1200-1800. It is submitted that the respondent/applicant was correctly absorbed in grade Rs.950-1500 as Junior Clerk. He was not eligible for absorption as Senior Clerk in grade Rs.1200-2040 on his medical decategorisation as he was working in a lower grade than that of Senior Clerk. At any rate the contentions of the respondent/applicant regarding his claim for absorption as Senior Clerk are not relevant in the present O.A. as he neither impugned the proceedings of his absorption nor made any prayer against the proceedings.

As already referred to supra, the Tribunal had disposed of the O.A. with the above directions. This Court in W.P.M.P.No.24783/99 on 7-10-1999 had granted interim suspension and on 26-9-2002 the said interim order was made absolute with a direction to expedite the hearing of the Writ Petition. The specific stand

taken by the writ petitioners/respondents is that Smt.K.Susheela was not in the cadre of Junior Clerk in the scale of pay of Rs.950-1500 on the date when the respondent/applicant entered the cadre of Junior Clerks and due to the practice of retaining all the names in the basic cadre of Junior Clerks the name of the respondent/applicant was shown above Smt.Susheela duly reckoning his date of entry into the grade of Rs.950-1500 in the parent cadre prior to medical decategorisation and the respondent/applicant was promoted as Senior Clerk on 15-5-1995 and his name figured at Sl.No.1 in the office order issued according to seniority wise and thus the representation of the respondent/applicant was disposed of as directed in O.A.No.190/95. It is also the stand of the Railways that on medical decategorisation the respondent/applicant was provided with ordinary appointment of Junior Clerk and at the time of fixing the seniority of the respondent/applicant in the cadre of Junior Clerks, the writ petitioners, following the practice of retaining all the names of the basic cadre of Junior Clerks had shown the name of the respondent/applicant also. The Tribunal had proceeded on the ground that in between Smt.Pramila and Smt.Susheela when the name of the respondent/applicant was inserted showing the seniority he shall be given that benefit and should be in the seniority list as Senior Clerk on par with his immediate junior Smt.K.Susheela. It is also pertinent to note that the said Smt.K.Susheela was not impleaded as a party. May be that in the view of the respondent, she would not be an affected party. But, definitely in view of the nature of the relief prayed for by the respondent/applicant, this Court is of the opinion that Smt.K.Susheela also is a necessary party to the O.A. and for the

reasons best known she was not impleaded as a party.

Be that as it may, in the light of the specific stand taken by the Railways in putting the name of the respondent in between Smt.Pramila and Smt.Susheela the said seniority cannot be taken advantage of by the respondent/applicant especially in view of the provisions of para-1314 of Indian Railway Establishment Manual which stipulates that medically decategorised employee should be given seniority in the grade of absorption. The impugned order made by the Tribunal granting relief in favour of the respondent/applicant cannot be definitely sustained. Inasmuch as in the light of the explanation given by the Railways, the insertion of his name in between Smt.Pramila and Smt.Susheela cannot be taken advantage of for praying for such relief in the light of the peculiar facts and circumstances specified supra. For the foregoing reasons, the impugned order made by the Tribunal in O.A.No.850/98 is liable to be set aside and the writ petitioners/Indian Railways are bound to succeed in the present Writ Petition.

Accordingly, the Writ Petition is hereby allowed. No costs.

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Bilal Nazki.,J

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P.S.Narayana.,J

Date : -6-2004

L.R. copy to be marked : YES / NO

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this 29th day of June 2004

ASSISTANT REGISTRAR

// **True copy**//

SECTION OFFICER

One fair copy to the Hon'ble Mr.Justice Bilal Nazki (for his Lordship's kind perusal).

One fair copy to the Hon'ble Mr.Justice P.S.Narayana (for his Lordship's kind perusal).

To

1. Central Administrative Tribunal,

Hyderabad Bench,

HAKA Bhavan, Hyderabad.

2. Union of India Rep by its General Manager
South Central Railway, Rail Nilayam, Secunderabad.
3. Chief Personnel Officer
South Central Railway, Rail Nilayam, Secunderabad.
4. Divisional Railway Manager
South Central Railway, Opposite Rail Nilayam, Secunderabad.

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